

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5, AS REPORTED
OFFERED BY MR. SENSENBRENNER OF
WISCONSIN
AND MR. TAUZIN OF LOUISIANA**

Strike all after the enacting clause and insert the following:

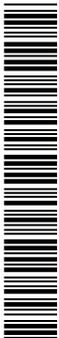
1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Help Efficient, Acces-
3 sible, Low-cost, Timely Healthcare (HEALTH) Act of
4 2003”.

5 SEC. 2. FINDINGS AND PURPOSE.

6 (a) FINDINGS.—

7 (1) EFFECT ON HEALTH CARE ACCESS AND
8 COSTS.—Congress finds that our current civil justice
9 system is adversely affecting patient access to health
10 care services, better patient care, and cost-efficient
11 health care, in that the health care liability system
12 is a costly and ineffective mechanism for resolving
13 claims of health care liability and compensating in-
14 jured patients, and is a deterrent to the sharing of
15 information among health care professionals which
16 impedes efforts to improve patient safety and quality
17 of care.



1 (2) EFFECT ON INTERSTATE COMMERCE.—
2 Congress finds that the health care and insurance
3 industries are industries affecting interstate com-
4 merce and the health care liability litigation systems
5 existing throughout the United States are activities
6 that affect interstate commerce by contributing to
7 the high costs of health care and premiums for
8 health care liability insurance purchased by health
9 care system providers.

10 (3) EFFECT ON FEDERAL SPENDING.—Con-
11 gress finds that the health care liability litigation
12 systems existing throughout the United States have
13 a significant effect on the amount, distribution, and
14 use of Federal funds because of—

15 (A) the large number of individuals who
16 receive health care benefits under programs op-
17 erated or financed by the Federal Government;

18 (B) the large number of individuals who
19 benefit because of the exclusion from Federal
20 taxes of the amounts spent to provide them
21 with health insurance benefits; and

22 (C) the large number of health care pro-
23 viders who provide items or services for which
24 the Federal Government makes payments.



1 (b) PURPOSE.—It is the purpose of this Act to imple-
2 ment reasonable, comprehensive, and effective health care
3 liability reforms designed to—

4 (1) improve the availability of health care serv-
5 ices in cases in which health care liability actions
6 have been shown to be a factor in the decreased
7 availability of services;

8 (2) reduce the incidence of “defensive medi-
9 cine” and lower the cost of health care liability in-
10 surance, all of which contribute to the escalation of
11 health care costs;

12 (3) ensure that persons with meritorious health
13 care injury claims receive fair and adequate com-
14 pensation, including reasonable noneconomic dam-
15 ages;

16 (4) improve the fairness and cost-effectiveness
17 of our current health care liability system to resolve
18 disputes over, and provide compensation for, health
19 care liability by reducing uncertainty in the amount
20 of compensation provided to injured individuals; and

21 (5) provide an increased sharing of information
22 in the health care system which will reduce unin-
23 tended injury and improve patient care.



1 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

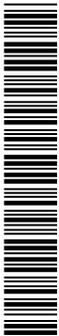
2 The time for the commencement of a health care law-
3 suit shall be 3 years after the date of manifestation of
4 injury or 1 year after the claimant discovers, or through
5 the use of reasonable diligence should have discovered, the
6 injury, whichever occurs first. In no event shall the time
7 for commencement of a health care lawsuit exceed 3 years
8 after the date of manifestation of injury unless tolled for
9 any of the following:

10 (1) Upon proof of fraud;

11 (2) Intentional concealment; or

12 (3) The presence of a foreign body, which has
13 no therapeutic or diagnostic purpose or effect, in the
14 person of the injured person.

15 Actions by a minor shall be commenced within 3 years
16 from the date of the alleged manifestation of injury except
17 that actions by a minor under the full age of 6 years shall
18 be commenced within 3 years of manifestation of injury
19 or prior to the minor's 8th birthday, whichever provides
20 a longer period. Such time limitation shall be tolled for
21 minors for any period during which a parent or guardian
22 and a health care provider or health care organization
23 have committed fraud or collusion in the failure to bring
24 an action on behalf of the injured minor.



1 **SEC. 4. COMPENSATING PATIENT INJURY.**

2 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
3 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
4 health care lawsuit, nothing in this Act shall limit a claim-
5 ant's recovery of the full amount of the available economic
6 damages, notwithstanding the limitation in subsection (b).

7 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
8 health care lawsuit, the amount of noneconomic damages,
9 if available, may be as much as \$250,000, regardless of
10 the number of parties against whom the action is brought
11 or the number of separate claims or actions brought with
12 respect to the same injury.

13 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
14 DAMAGES.—For purposes of applying the limitation in
15 subsection (b), future noneconomic damages shall not be
16 discounted to present value. The jury shall not be in-
17 formed about the maximum award for noneconomic dam-
18 ages. An award for noneconomic damages in excess of
19 \$250,000 shall be reduced either before the entry of judg-
20 ment, or by amendment of the judgment after entry of
21 judgment, and such reduction shall be made before ac-
22 counting for any other reduction in damages required by
23 law. If separate awards are rendered for past and future
24 noneconomic damages and the combined awards exceed
25 \$250,000, the future noneconomic damages shall be re-
26 duced first.



1 (d) FAIR SHARE RULE.—In any health care lawsuit,
2 each party shall be liable for that party's several share
3 of any damages only and not for the share of any other
4 person. Each party shall be liable only for the amount of
5 damages allocated to such party in direct proportion to
6 such party's percentage of responsibility. Whenever a
7 judgment of liability is rendered as to any party, a sepa-
8 rate judgment shall be rendered against each such party
9 for the amount allocated to such party. For purposes of
10 this section, the trier of fact shall determine the propor-
11 tion of responsibility of each party for the claimant's
12 harm.

13 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

14 (a) COURT SUPERVISION OF SHARE OF DAMAGES
15 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
16 suit, the court shall supervise the arrangements for pay-
17 ment of damages to protect against conflicts of interest
18 that may have the effect of reducing the amount of dam-
19 ages awarded that are actually paid to claimants. In par-
20 ticular, in any health care lawsuit in which the attorney
21 for a party claims a financial stake in the outcome by vir-
22 tue of a contingent fee, the court shall have the power
23 to restrict the payment of a claimant's damage recovery
24 to such attorney, and to redirect such damages to the
25 claimant based upon the interests of justice and principles



1 of equity. In no event shall the total of all contingent fees
2 for representing all claimants in a health care lawsuit ex-
3 ceed the following limits:

4 (1) 40 percent of the first \$50,000 recovered by
5 the claimant(s).

6 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered
7 by the claimant(s).

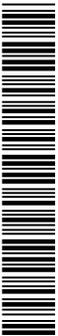
8 (3) 25 percent of the next \$500,000 recovered
9 by the claimant(s).

10 (4) 15 percent of any amount by which the re-
11 covery by the claimant(s) is in excess of \$600,000.

12 (b) **APPLICABILITY.**—The limitations in this section
13 shall apply whether the recovery is by judgment, settle-
14 ment, mediation, arbitration, or any other form of alter-
15 native dispute resolution. In a health care lawsuit involv-
16 ing a minor or incompetent person, a court retains the
17 authority to authorize or approve a fee that is less than
18 the maximum permitted under this section. The require-
19 ment for court supervision in the first two sentences of
20 subsection (a) applies only in civil actions.

21 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

22 In any health care lawsuit involving injury or wrong-
23 ful death, any party may introduce evidence of collateral
24 source benefits. If a party elects to introduce such evi-
25 dence, any opposing party may introduce evidence of any



1 amount paid or contributed or reasonably likely to be paid
2 or contributed in the future by or on behalf of the oppos-
3 ing party to secure the right to such collateral source bene-
4 fits. No provider of collateral source benefits shall recover
5 any amount against the claimant or receive any lien or
6 credit against the claimant's recovery or be equitably or
7 legally subrogated to the right of the claimant in a health
8 care lawsuit involving injury or wrongful death. This sec-
9 tion shall apply to any health care lawsuit that is settled
10 as well as a health care lawsuit that is resolved by a fact
11 finder. This section shall not apply to section 1862(b) (42
12 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
13 1396a(a)(25)) of the Social Security Act.

14 **SEC. 7. PUNITIVE DAMAGES.**

15 (a) IN GENERAL.—Punitive damages may, if other-
16 wise permitted by applicable State or Federal law, be
17 awarded against any person in a health care lawsuit only
18 if it is proven by clear and convincing evidence that such
19 person acted with malicious intent to injure the claimant,
20 or that such person deliberately failed to avoid unneces-
21 sary injury that such person knew the claimant was sub-
22 stantially certain to suffer. In any health care lawsuit
23 where no judgment for compensatory damages is rendered
24 against such person, no punitive damages may be awarded
25 with respect to the claim in such lawsuit. No demand for



1 punitive damages shall be included in a health care lawsuit
2 as initially filed. A court may allow a claimant to file an
3 amended pleading for punitive damages only upon a mo-
4 tion by the claimant and after a finding by the court, upon
5 review of supporting and opposing affidavits or after a
6 hearing, after weighing the evidence, that the claimant has
7 established by a substantial probability that the claimant
8 will prevail on the claim for punitive damages. At the re-
9 quest of any party in a health care lawsuit, the trier of
10 fact shall consider in a separate proceeding—

11 (1) whether punitive damages are to be award-
12 ed and the amount of such award; and

13 (2) the amount of punitive damages following a
14 determination of punitive liability.

15 If a separate proceeding is requested, evidence relevant
16 only to the claim for punitive damages, as determined by
17 applicable State law, shall be inadmissible in any pro-
18 ceeding to determine whether compensatory damages are
19 to be awarded.

20 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
21 AGES.—

22 (1) FACTORS CONSIDERED.—In determining
23 the amount of punitive damages, if awarded, in a
24 health care lawsuit, the trier of fact shall consider
25 only the following:



1 (A) the severity of the harm caused by the
2 conduct of such party;

3 (B) the duration of the conduct or any
4 concealment of it by such party;

5 (C) the profitability of the conduct to such
6 party;

7 (D) the number of products sold or med-
8 ical procedures rendered for compensation, as
9 the case may be, by such party, of the kind
10 causing the harm complained of by the claim-
11 ant;

12 (E) any criminal penalties imposed on such
13 party, as a result of the conduct complained of
14 by the claimant; and

15 (F) the amount of any civil fines assessed
16 against such party as a result of the conduct
17 complained of by the claimant.

18 (2) MAXIMUM AWARD.—The amount of punitive
19 damages, if awarded, in a health care lawsuit may
20 be as much as \$250,000 or as much as two times
21 the amount of economic damages awarded, which-
22 ever is greater. The jury shall not be informed of
23 this limitation.

24 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
25 COMPLY WITH FDA STANDARDS.—



1 (1) IN GENERAL.—

2 (A) No punitive damages may be awarded
3 against the manufacturer or distributor of a
4 medical product, or a supplier of any compo-
5 nent or raw material of such medical product,
6 based on a claim that such product caused the
7 claimant’s harm where—

8 (i)(I) such medical product was sub-
9 ject to premarket approval, clearance, or li-
10 censure by the Food and Drug Administra-
11 tion with respect to the safety of the for-
12 mulation or performance of the aspect of
13 such medical product which caused the
14 claimant’s harm or the adequacy of the
15 packaging or labeling of such medical
16 product; and

17 (II) such medical product was so ap-
18 proved, cleared, or licensed; or

19 (ii) such medical product is generally
20 recognized among qualified experts as safe
21 and effective pursuant to conditions estab-
22 lished by the Food and Drug Administra-
23 tion and applicable Food and Drug Admin-
24 istration regulations, including without
25 limitation those related to packaging and



1 labeling, unless the Food and Drug Admin-
2 istration has determined that such medical
3 product was not manufactured or distrib-
4 uted in substantial compliance with appli-
5 cable Food and Drug Administration stat-
6 utes and regulations.

7 (B) RULE OF CONSTRUCTION.—Subpara-
8 graph (A) may not be construed as establishing
9 the obligation of the Food and Drug Adminis-
10 tration to demonstrate affirmatively that a
11 manufacturer, distributor, or supplier referred
12 to in such subparagraph meets any of the con-
13 ditions described in such subparagraph.

14 (2) LIABILITY OF HEALTH CARE PROVIDERS.—
15 A health care provider who prescribes, or who dis-
16 penses pursuant to a prescription, a medical product
17 approved, licensed, or cleared by the Food and Drug
18 Administration shall not be named as a party to a
19 product liability lawsuit involving such product and
20 shall not be liable to a claimant in a class action
21 lawsuit against the manufacturer, distributor, or
22 seller of such product. Nothing in this paragraph
23 prevents a court from consolidating cases involving
24 health care providers and cases involving products li-



1 ability claims against the manufacturer, distributor,
2 or product seller of such medical product.

3 (3) PACKAGING.—In a health care lawsuit for
4 harm which is alleged to relate to the adequacy of
5 the packaging or labeling of a drug which is required
6 to have tamper-resistant packaging under regula-
7 tions of the Secretary of Health and Human Serv-
8 ices (including labeling regulations related to such
9 packaging), the manufacturer or product seller of
10 the drug shall not be held liable for punitive dam-
11 ages unless such packaging or labeling is found by
12 the trier of fact by clear and convincing evidence to
13 be substantially out of compliance with such regula-
14 tions.

15 (4) EXCEPTION.—Paragraph (1) shall not
16 apply in any health care lawsuit in which—

17 (A) a person, before or after premarket ap-
18 proval, clearance, or licensure of such medical
19 product, knowingly misrepresented to or with-
20 held from the Food and Drug Administration
21 information that is required to be submitted
22 under the Federal Food, Drug, and Cosmetic
23 Act (21 U.S.C. 301 et seq.) or section 351 of
24 the Public Health Service Act (42 U.S.C. 262)

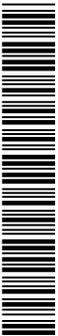


1 that is material and is causally related to the
2 harm which the claimant allegedly suffered; or
3 (B) a person made an illegal payment to
4 an official of the Food and Drug Administra-
5 tion for the purpose of either securing or main-
6 taining approval, clearance, or licensure of such
7 medical product.

8 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
9 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
10 **SUITS.**

11 (a) IN GENERAL.—In any health care lawsuit, if an
12 award of future damages, without reduction to present
13 value, equaling or exceeding \$50,000 is made against a
14 party with sufficient insurance or other assets to fund a
15 periodic payment of such a judgment, the court shall, at
16 the request of any party, enter a judgment ordering that
17 the future damages be paid by periodic payments. In any
18 health care lawsuit, the court may be guided by the Uni-
19 form Periodic Payment of Judgments Act promulgated by
20 the National Conference of Commissioners on Uniform
21 State Laws.

22 (b) APPLICABILITY.—This section applies to all ac-
23 tions which have not been first set for trial or retrial be-
24 fore the effective date of this Act.



1 **SEC. 9. DEFINITIONS.**

2 In this Act:

3 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
4 TEM; ADR.—The term “alternative dispute resolution
5 system” or “ADR” means a system that provides
6 for the resolution of health care lawsuits in a man-
7 ner other than through a civil action brought in a
8 State or Federal court.

9 (2) CLAIMANT.—The term “claimant” means
10 any person who brings a health care lawsuit, includ-
11 ing a person who asserts or claims a right to legal
12 or equitable contribution, indemnity or subrogation,
13 arising out of a health care liability claim or action,
14 and any person on whose behalf such a claim is as-
15 serted or such an action is brought, whether de-
16 ceased, incompetent, or a minor.

17 (3) COLLATERAL SOURCE BENEFITS.—The
18 term “collateral source benefits” means any amount
19 paid or reasonably likely to be paid in the future to
20 or on behalf of the claimant, or any service, product
21 or other benefit provided or reasonably likely to be
22 provided in the future to or on behalf of the claim-
23 ant, as a result of the injury or wrongful death, pur-
24 suant to—



1 (A) any State or Federal health, sickness,
2 income-disability, accident, or workers' com-
3 pensation law;

4 (B) any health, sickness, income-disability,
5 or accident insurance that provides health bene-
6 fits or income-disability coverage;

7 (C) any contract or agreement of any
8 group, organization, partnership, or corporation
9 to provide, pay for, or reimburse the cost of
10 medical, hospital, dental, or income disability
11 benefits; and

12 (D) any other publicly or privately funded
13 program.

14 (4) COMPENSATORY DAMAGES.—The term
15 “compensatory damages” means objectively verifi-
16 able monetary losses incurred as a result of the pro-
17 vision of, use of, or payment for (or failure to pro-
18 vide, use, or pay for) health care services or medical
19 products, such as past and future medical expenses,
20 loss of past and future earnings, cost of obtaining
21 domestic services, loss of employment, and loss of
22 business or employment opportunities, damages for
23 physical and emotional pain, suffering, inconven-
24 ience, physical impairment, mental anguish, dis-
25 figurement, loss of enjoyment of life, loss of society



1 and companionship, loss of consortium (other than
2 loss of domestic service), hedonic damages, injury to
3 reputation, and all other nonpecuniary losses of any
4 kind or nature. The term “compensatory damages”
5 includes economic damages and noneconomic dam-
6 ages, as such terms are defined in this section.

7 (5) CONTINGENT FEE.—The term “contingent
8 fee” includes all compensation to any person or per-
9 sons which is payable only if a recovery is effected
10 on behalf of one or more claimants.

11 (6) ECONOMIC DAMAGES.—The term “economic
12 damages” means objectively verifiable monetary
13 losses incurred as a result of the provision of, use
14 of, or payment for (or failure to provide, use, or pay
15 for) health care services or medical products, such as
16 past and future medical expenses, loss of past and
17 future earnings, cost of obtaining domestic services,
18 loss of employment, and loss of business or employ-
19 ment opportunities.

20 (7) HEALTH CARE LAWSUIT.—The term
21 “health care lawsuit” means any health care liability
22 claim concerning the provision of health care goods
23 or services or any medical product affecting inter-
24 state commerce, or any health care liability action
25 concerning the provision of health care goods or



1 services or any medical product affecting interstate
2 commerce, brought in a State or Federal court or
3 pursuant to an alternative dispute resolution system,
4 against a health care provider, a health care organi-
5 zation, or the manufacturer, distributor, supplier,
6 marketer, promoter, or seller of a medical product,
7 regardless of the theory of liability on which the
8 claim is based, or the number of claimants, plain-
9 tiffs, defendants, or other parties, or the number of
10 claims or causes of action, in which the claimant al-
11 leges a health care liability claim. Such term does
12 not include a claim or action which is based on
13 criminal liability; which seeks civil fines or penalties
14 paid to Federal, State, or local government; or which
15 is grounded in antitrust.

16 (8) HEALTH CARE LIABILITY ACTION.—The
17 term “health care liability action” means a civil ac-
18 tion brought in a State or Federal Court or pursu-
19 ant to an alternative dispute resolution system,
20 against a health care provider, a health care organi-
21 zation, or the manufacturer, distributor, supplier,
22 marketer, promoter, or seller of a medical product,
23 regardless of the theory of liability on which the
24 claim is based, or the number of plaintiffs, defend-
25 ants, or other parties, or the number of causes of ac-

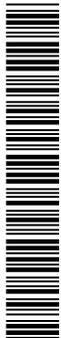


1 tion, in which the claimant alleges a health care li-
2 ability claim.

3 (9) HEALTH CARE LIABILITY CLAIM.—The
4 term “health care liability claim” means a demand
5 by any person, whether or not pursuant to ADR,
6 against a health care provider, health care organiza-
7 tion, or the manufacturer, distributor, supplier, mar-
8 keter, promoter, or seller of a medical product, in-
9 cluding, but not limited to, third-party claims, cross-
10 claims, counter-claims, or contribution claims, which
11 are based upon the provision of, use of, or payment
12 for (or the failure to provide, use, or pay for) health
13 care services or medical products, regardless of the
14 theory of liability on which the claim is based, or the
15 number of plaintiffs, defendants, or other parties, or
16 the number of causes of action.

17 (10) HEALTH CARE ORGANIZATION.—The term
18 “health care organization” means any person or en-
19 tity which is obligated to provide or pay for health
20 benefits under any health plan, including any person
21 or entity acting under a contract or arrangement
22 with a health care organization to provide or admin-
23 ister any health benefit.

24 (11) HEALTH CARE PROVIDER.—The term
25 “health care provider” means any person or entity



1 required by State or Federal laws or regulations to
2 be licensed, registered, or certified to provide health
3 care services, and being either so licensed, reg-
4 istered, or certified, or exempted from such require-
5 ment by other statute or regulation.

6 (12) HEALTH CARE GOODS OR SERVICES.—The
7 term “health care goods or services” means any
8 goods or services provided by a health care organiza-
9 tion, provider, or by any individual working under
10 the supervision of a health care provider, that relates
11 to the diagnosis, prevention, or treatment of any
12 human disease or impairment, or the assessment or
13 care of the health of human beings.

14 (13) MALICIOUS INTENT TO INJURE.—The
15 term “malicious intent to injure” means inten-
16 tionally causing or attempting to cause physical in-
17 jury other than providing health care goods or serv-
18 ices.

19 (14) MEDICAL PRODUCT.—The term “medical
20 product” means a drug, device, or biological product
21 intended for humans, and the terms “drug”, “de-
22 vice”, and “biological product” have the meanings
23 given such terms in sections 201(g)(1) and 201(h)
24 of the Federal Food, Drug and Cosmetic Act (21
25 U.S.C. 321) and section 351(a) of the Public Health



1 Service Act (42 U.S.C. 262(a)), respectively, includ-
2 ing any component or raw material used therein, but
3 excluding health care services.

4 (15) NONECONOMIC DAMAGES.—The term
5 “noneconomic damages” means damages for phys-
6 ical and emotional pain, suffering, inconvenience,
7 physical impairment, mental anguish, disfigurement,
8 loss of enjoyment of life, loss of society and compan-
9 ionship, loss of consortium (other than loss of do-
10 mestic service), hedonic damages, injury to reputa-
11 tion, and all other nonpecuniary losses of any kind
12 or nature.

13 (16) PUNITIVE DAMAGES.—The term “punitive
14 damages” means damages awarded, for the purpose
15 of punishment or deterrence, and not solely for com-
16 pensatory purposes, against a health care provider,
17 health care organization, or a manufacturer, dis-
18 tributor, or supplier of a medical product. Punitive
19 damages are neither economic nor noneconomic
20 damages.

21 (17) RECOVERY.—The term “recovery” means
22 the net sum recovered after deducting any disburse-
23 ments or costs incurred in connection with prosecu-
24 tion or settlement of the claim, including all costs
25 paid or advanced by any person. Costs of health care



1 incurred by the plaintiff and the attorneys' office
2 overhead costs or charges for legal services are not
3 deductible disbursements or costs for such purpose.

4 (18) STATE.—The term “State” means each of
5 the several States, the District of Columbia, the
6 Commonwealth of Puerto Rico, the Virgin Islands,
7 Guam, American Samoa, the Northern Mariana Is-
8 lands, the Trust Territory of the Pacific Islands, and
9 any other territory or possession of the United
10 States, or any political subdivision thereof.

11 **SEC. 10. EFFECT ON OTHER LAWS.**

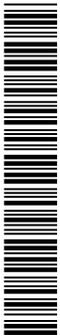
12 (a) VACCINE INJURY.—

13 (1) To the extent that title XXI of the Public
14 Health Service Act establishes a Federal rule of law
15 applicable to a civil action brought for a vaccine-re-
16 lated injury or death—

17 (A) this Act does not affect the application
18 of the rule of law to such an action; and

19 (B) any rule of law prescribed by this Act
20 in conflict with a rule of law of such title XXI
21 shall not apply to such action.

22 (2) If there is an aspect of a civil action
23 brought for a vaccine-related injury or death to
24 which a Federal rule of law under title XXI of the
25 Public Health Service Act does not apply, then this



1 Act or otherwise applicable law (as determined
2 under this Act) will apply to such aspect of such ac-
3 tion.

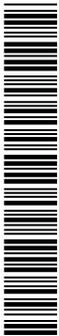
4 (b) OTHER FEDERAL LAW.—Except as provided in
5 this section, nothing in this Act shall be deemed to affect
6 any defense available to a defendant in a health care law-
7 suit or action under any other provision of Federal law.

8 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
9 **RIGHTS.**

10 (a) HEALTH CARE LAWSUITS.—The provisions gov-
11 erning health care lawsuits set forth in this Act preempt,
12 subject to subsections (b) and (c), State law to the extent
13 that State law prevents the application of any provisions
14 of law established by or under this Act. The provisions
15 governing health care lawsuits set forth in this Act super-
16 sede chapter 171 of title 28, United States Code, to the
17 extent that such chapter—

18 (1) provides for a greater amount of damages
19 or contingent fees, a longer period in which a health
20 care lawsuit may be commenced, or a reduced appli-
21 cability or scope of periodic payment of future dam-
22 ages, than provided in this Act; or

23 (2) prohibits the introduction of evidence re-
24 garding collateral source benefits, or mandates or



1 permits subrogation or a lien on collateral source
2 benefits.

3 (b) PROTECTION OF STATES' RIGHTS AND OTHER
4 LAWS.—(1) Any issue that is not governed by any provi-
5 sion of law established by or under this Act (including
6 State standards of negligence) shall be governed by other-
7 wise applicable State or Federal law.

8 (2) This Act shall not preempt or supersede any State
9 or Federal law that imposes greater procedural or sub-
10 stantive protections for health care providers and health
11 care organizations from liability, loss, or damages than
12 those provided by this Act or create a cause of action.

13 (c) STATE FLEXIBILITY.—No provision of this Act
14 shall be construed to preempt—

15 (1) any State law (whether effective before, on,
16 or after the date of the enactment of this Act) that
17 specifies a particular monetary amount of compen-
18 satory or punitive damages (or the total amount of
19 damages) that may be awarded in a health care law-
20 suit, regardless of whether such monetary amount is
21 greater or lesser than is provided for under this Act,
22 notwithstanding section 4(a); or

23 (2) any defense available to a party in a health
24 care lawsuit under any other provision of State or
25 Federal law.



1 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

2 This Act shall apply to any health care lawsuit
3 brought in a Federal or State court, or subject to an alter-
4 native dispute resolution system, that is initiated on or
5 after the date of the enactment of this Act, except that
6 any health care lawsuit arising from an injury occurring
7 prior to the date of the enactment of this Act shall be
8 governed by the applicable statute of limitations provisions
9 in effect at the time the injury occurred.

10 **SEC. 13. SENSE OF CONGRESS.**

11 It is the sense of Congress that a health insurer
12 should be liable for damages for harm caused when it
13 makes a decision as to what care is medically necessary
14 and appropriate.

